Advisory

Communications

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FCC Enforcement Monitor

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FCC Issues $30,000 and $12,000 Fines to Three Co-owned Commercial Television Stations and Three Co-owned Class A Television Stations for Failure to Publicize the Existence and Location of Their Quarterly Children's Television Programming Reports

Reinforcing several decisions discussed in last month's Enforcement Monitor, the FCC issued two additional forfeiture orders for failure to publicize the existence and location of a station's quarterly Children's Television Programming Reports in violation of Section 73.3526(e)(11)(iii) of the Commission's Rules. That provision states that "[l]icensees shall publicize in an appropriate manner the existence and location of these Reports."

In the first case, which involved three co-owned Arkansas television stations, the FCC levied a $10,000 per station fine, totaling $30,000. The licensee disclosed its failure to publicize the Children's Report information in the stations' 2005 license renewal applications. The FCC issued three separate Notices of Apparent Liability ("NAL") to the licensee in December 2005. The licensee's January 2006 consolidated response to the NALs sought a reduction or cancellation of each fine based on a limited operating budget, history of overall compliance, and the voluntary disclosure of the violations. The licensee's response also stated that the forfeitures were excessive compared to past FCC fines for similar violations. The FCC's Forfeiture Order stated that the fines in the instant case were appropriate since the licensee had failed to publicize the information for the *entire* license term, unlike the cases cited in the licensee's response, which involved failure to publish for only a portion of the license term. The FCC challenged the notion that the licensee's disclosure in response to a question presented on the license renewal application constituted a voluntary disclosure, and after reviewing the licensee's last three years of financial statements, the FCC also concluded that the licensee had not demonstrated an inability to pay the fines.

In the second case, which involved three co-owned Washington Class A television stations, the FCC levied a $4,000 per station fine, totaling $12,000. The licensee had also disclosed its failure to publicize the Children's Report information in the stations' 2006 license renewal applications, and disclosed that it had failed to provide the required target age group for the children's programming to program guide publishers, as required by Section 73.673 of the FCC's Rules.

In December 2008, the FCC issued three separate NALs, each seeking a $4,000 penalty. In January 2009, the Class A licensee filed separate responses, which stated that the violations were not willful since the licensee "did not understand the requirements," that the licensee had "gone to great lengths to follow practices and fully comply with all laws," and that the forfeiture would create a financial hardship for the licensee. The Forfeiture Order reiterated the FCC's long held view that a "willful" violation does not require intent to violate a regulation and that lack of knowledge of the law is not a defense. Similar to the case above, the licensee's own disclosure was used as evidence of a history of noncompliance. With regard to financial hardship, the FCC determined that the licensee should be able to pay the $12,000 fine, which equated to less than six percent of the licensee's 2008 gross revenues.

FCC Fines Nonresponsive Texas Cable Operator $38,000 for Emergency Alert System and Antenna Structure Violations

In two recent Forfeiture Orders, the FCC levied fines totaling $38,000 against a Texas cable operator for violations of the Commission's Emergency Alert System ("EAS") and Antenna Structure Registration rules. Pursuant to Section 11.35(a) of the Commission's Rules, cable operators must ensure that the required EAS equipment is installed, maintained and monitored, which includes logging any instances in which EAS messages are transmitted as part of an EAS test. Sections 17.4(g), 17.48 and 17.51(a) require antenna structure owners to, respectively, display the antenna structure tower registration number, report and resolve tower lighting malfunctions, and illuminate red obstruction lighting between sunset and sunrise. The FCC assessed the combined forfeitures, stating that the cable operator had failed to comply with these requirements. The cable operator apparently did not help its situation when it failed to respond to either NAL sent by the FCC.

FCC Fines Broadcasters $7,000 for Failure to Timely File License Renewal Applications and for Unauthorized Operation

In a series of three cases, the FCC issued fines of $7,000 for failure to timely file a license renewal application pursuant to Section 73.3539 of the FCC's Rules, which resulted in the unauthorized operation of each station after its existing authorization expired. The cases involved reliance on informal FCC staff advice, late-filed requests for special temporary authority ("STA") and a lack of knowledge of the FCC's online application filing database ("CDBS").

In the first case, which included a Vermont full-power FM station and its associated FM translator station, the FCC levied a $7,000 fine for late submission of the full-power renewal application and a $500 fine for the late submission of the translator renewal application. The applications were due in December 2005, and because no applications were filed, the licenses expired in April 2006. The licensee filed the FM renewal application in August 2006, with the FM translator renewal application being filed the next day. The licensee did not seek an STA to continue operating the stations while the FCC processed the applications. In November 2007, the FCC issued two NALs seeking fines totaling $7,500. The licensee's December 2007 responses sought a reduction or cancellation of the fines based on the fact that the licensee "thought it had correctly filed the renewal applications in October 2005." The licensee explained that it had prepared the renewal applications using the FCC's electronic filing system, and that the applications indicated a status of "pending." The Forfeiture Order repeated that a willful violation does not require an intent to violate a rule, and that "confusion or difficulties with the CDBS filing system are not grounds for reduction or cancellation of a forfeiture."

In the second case, the licensee of a Kansas full-power FM station failed to timely file a license renewal application by February 2005 and did not seek an STA to continue operation after the license expired in June 2005. In August 2005, the licensee late-filed the license renewal application and sought an STA to continue operations. The STA was granted in September 2005 with an expiration date of March 2006. The licensee failed to seek an extension of the original STA until May 2006, which was immediately granted by the FCC. In February 2007, the FCC issued an NAL proposing a $7,000 fine. In its March 2007 response, the licensee sought reconsideration of the forfeiture based on a lack of knowledge of CDBS and the license renewal process, missing password information, and financial hardship. In its Order, the FCC '"sympathized" with the licensee and its challenges, but stated that licensees are responsible for compliance with the FCC's rules, including timely submission of a license renewal application. The FCC denied the claim of financial hardship since the licensee failed to present the required financial documents.

In the third case, the licensee of a noncommercial Missouri FM station was fined $7,000 for failure to timely file a license renewal application and request an STA. The station's license renewal application was due in October 2004 and the license expired in February 2005. The licensee filed the license renewal application six days after the license expiration date. A week after that, the licensee filed an STA request seeking to continue operation while its license renewal application was processed. The STA request was granted with expiration set for October 2005. The licensee failed to extend the original STA until August 2006. In January 2007, the FCC issued an NAL. The licensee's March 2007 response sought a reduction or cancellation of the fine based on "good faith efforts to file the renewal application and its reliance on staff advice." The licensee claimed that, like the case mentioned above, the application had been successfully filed with the FCC since the application reflected a "pending" status within the licensee's CDBS account. The licensee indicated it was unaware that it needed an STA to continue operations after the application had been successfully filed and that an "FCC staff member stated that since the license renewal was under review, an STA extension was unnecessary." The FCC's Order stated that inadvertent error and lack of familiarity with the FCC's requirements are still willful violations and that a licensee may not rely on FCC staff advice.

Idaho Station Fined $4,000 for Failure to Fully Disclose All Material Terms of a Contest

In April 2009, following a May 2008 complaint which alleged that a station had "fixed" the outcome of a contest, the FCC issued a Notice of Inquiry ("NOI") to a Boise FM station. The NOI sought information associated with an April 2008 contest which included a single giveaway event, multiple prizes, and only one winner. The licensee's May 2009 response to the NOI explained that the winner of the contest would receive numerous prizes that would amount to the "Ultimate Garage." The LOI response indicated that 10 finalists would gather on a designated date and would be eliminated until there was a sole winner. The process of elimination would be by chance. Each finalist would receive a key and the key that unlocked the garage would determine the ultimate winner.

In response, the FCC issued a March 2010 NAL for failure to fully and accurately disclose all material terms associated with a contest as required by Section 73.1216 of the FCC's Rules. According to the NAL, the licensee aired recorded and live announcements promoting the contest and its rules. It also posted information regarding the contest on its website. The NAL stated that of the ten recorded announcements, only two disclosed the fact that there would only be one winner. The licensee was unable to provide detailed information regarding the time and exact content of the live announcements. Like the recorded announcements, however, the contest information on the station's website was unclear regarding the fact that there would only be a single winner, and failed to provide information regarding the process by which a winner would be selected for the contest.

The NAL stated that there was "insufficient evidence to conclude that the station pre-determined the winner" but noted that while the FCC's rules "permit discretion in the time and manner of broadcasting a contest's material terms, such discretion is not absolute." The FCC therefore assessed the $4000 fine for failure to properly disclose the terms of the contest to the public.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the authors below:

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